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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 302

ARTHUR ST. JOHN, CHESTER WALCZAK, AL FUHRMAN, ET AL, ETC.,

Appellants,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD, L. E. GOODING, J. E. FITZGIBBON and HENRY C. RULE, Individually, etc.

Appellees.

On Appeal From the District Court for the Eastern District of Wisconsin

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BRIEF FOR APPELLANTS

MAX RASKIN,
Counsel for Appellants.

INDEX

	Page
Opinion Below	1
Jurisdiction	2
Statutes Involved	2
Questions Presented	3
Statement	4
Specification of Errors	6
Argument	7-17
I. Can a judgment declaring rights and status be entered on a complaint which does not state a cause of action?	7
II. The amended complaint raises issues not adjudicated by the Wisconsin Courts	11
III. Conflict with Federal Law	14
Conclusion	17
Appendix A	18

CASES CITED

Page

Amalgamated Assn. of Street, Electric, Railway & Coach Employees of America, Division 998, v. Milwaukee Electric Railway and Transport Co., et al 255 Wis. 163 8

Chas. H. Stehling Co. v. Milcor Steel Co., 242 Wis. 629 10

Gentilli v. Brennan, 202 Wis. 465 9

Heller v. Shapiro, 208 Wis. 310, 316 8

Miller v. Currie, 208 Wis. 199, 204 7

Trathen v. Lyon, 224 Wis. 446 9

United Gas, Coke & C. Workers of America, Local 18 C.I.O. v. Wisconsin Employment Relations Board, 255 Wis. 154 .....5, 7-13, 14

United States F. & G. Co. v. Pullen, 230 Wis. 137..... 10

STATUTES CITED

Subchapter III, Chapter 111, Wisconsin Statutes, 1947, Sections 111.50 to 111.64 inclusive (Appendix A).... 18

Labor-Management Relations Act, 1947, 61 Stat. 136, 29 U.S.C., Supp. II, 141-147.

Title I, Section 1. 8 (a) 8 (b) 13, 14 (b)

Title II, Section 201 (Appendix A)..... 21

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BRIEF FOR APPELLANTS

Opinion Below

The opinion of the District Court for the Eastern District of Wisconsin is reported in 90 Fed. Supp. 347, and may be found on page 91 of the original record, 59 of the printed record; dissenting opinion, page 99 of the original record and 67 of the printed record.

Jurisdiction

The judgment of the District Court was entered on June 14, 1950. The order of District Judge Robert E. Tehan allowing this appeal was entered August 8, 1950. The order of this court noting probable jurisdiction was entered on October 23, 1950. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28 of the United States Code, Sections 1253 and 2281.

Statutes Involved

Subchapter III of Chapter 111, Wisconsin Statutes, 1947, Sections 111.50 to 111.64, inclusive, and the Labor-Management Relations Act, 1947 (61 Stats. 136; 29 U.S.C. S.Sec. 141), material parts of which statutes are set out in full in Appendix A to this Brief.

For the convenience of the court a summary of the Wisconsin Statutes is presented here.

Section 111.53 provides for the appointment by the Wisconsin Employment Relations Board of a panel of conciliators and arbitrators.

Section 111.54 provides that if a labor dispute between a Public Utility and its employees reaches a stalemate, either party may petition the Board to appoint a conciliator to attempt to settle the dispute.

Section 111.55 provides that if within 15 days after his appointment the conciliator is unable to settle the dispute, he must report that fact to the Board. If the Board believes that a continuation of the dispute will cause or is

likely to cause the interruption of an essential service, it shall submit the names of either 3 or 5 persons from the panel provided for in Sec. 111.53. Each party shall strike one name from such list and the person or persons left on the list shall be appointed by the Board as the arbitrator to hear and determine such dispute.

Section 111.56 provides that the *status quo* be maintained.

Section 111.62 makes it a criminal offense for public utility employees, acting in concert, to call a strike or go out on strike, or to cause any work stoppage or slowdown which would cause an interruption of an essential service.

It also makes it a criminal offense for any person to instigate, to induce, to conspire with, or to encourage any other person or persons to engage in any strike or lock-out, or slowdown, or work stoppage which would cause an interruption of an essential service.

Section 111.63 provides for enforcement by the Board, including the rights to apply for injunction, to restrain violation or to compel performance.

Section 111.64 provides that the subchapter shall not be construed to require any individual employee to render labor or service without his consent, or make it illegal to quit or withdraw from his place of employment unless done in concert with others, and no process shall issue to compel an individual to render service or remain at his employment without his consent.

Questions Presented

Is a judgment of the Circuit Court of Milwaukee County, affirmed by the Supreme Court of Wisconsin, dismissing a complaint on a general demurrer, *res judicata* in a new

action between the same parties in the United States District Court, based on a complaint containing sixteen allegations of material fact, which were not in the complaint in the State case?

Does subchapter III of Chapter 111, Wisconsin Statutes, 1947, violate the 13th and 14th Amendments to the Constitution of the United States?

Is subchapter III of Chapter 111 in conflict with the Labor-Management Relations Act of 1947?

Statement

This is an action to restrain the enforcement of a statute of the State of Wisconsin, on the ground that it violates the 13th and 14th Amendments to the United States Constitution and also is in conflict with the Federal Labor-Management Relations Act of 1947.

The District Court for the Eastern District of Wisconsin declined to pass on the merits of the case and dismissed the complaint, holding that a judgment in a previous action between the same parties in a state court was *res judicata,* one judge dissenting.

The judgment of the state court was entered by the Circuit Court of Milwaukee County on the 6th day of January, 1949.

That was an action for Declaratory relief. The defendants demurred to the complaint on the grounds that the complaint did not state facts sufficient to constitute a cause of action. The Circuit Court sustained the demurrers and the Supreme Court of Wisconsin affirmed the decision

of the Circuit Court; *United G. C. & C. Workers of America, Local 18, C. I. O., et al., v. Wisconsin Employment Relations Board, et al*, 255 Wis. 154-163, 38 N. W. (2d) 692-697.

A copy of the complaint and judgment of the Circuit Court was received in evidence as an exhibit and is part of the record transmitted to this court (R. 25-30).

The instant case was commenced October 4, 1949. On October 5, 1949, the employees of the defendant, Milwaukee Gas Light Company, went out on strike.

On October 5th, after the strike was called, the defendant, Wisconsin Employment Relations Board, secured an order from the Circuit Court of Milwaukee County, restraining picketing, and ordering the union and its officers to take immediate steps to notify all employees to resume work forthwith.

On October 6, 1949, the union and the defendant company agreed on wages, hours and other conditions of employment but did not agree on the pension plan which was one of the principal issues in dispute.

The strike was called off and the employees returned to work on October 6, 1949.

On October 10, 1949, the defendant, Wisconsin Employment Relations Board, secured an order from the Circuit Court of Milwaukee County, commanding the appellant union and certain of its members to show cause why they should not be punished for contempt for violating the order of October 5th.

These developments necessitated the filing of an amended complaint which was filed October 18, 1949.

This amended complaint contained 16 allegations of material fact which did not appear in the complaint acted

on by the Circuit Court of Milwaukee County, or the Supreme Court of Wisconsin.

These allegations are set out in paragraphs 20, 22, 23, 25, 27, 28, 29, 30, 31, 32, 33, 34, 37, 38 and 39 of the amended complaint (R. 1).

This was the complaint to which all of the defendants answered and is the complaint involved herein.

The issues raised by the pleadings were resolved and set out in a Stipulation of Facts filed in and received by the District Court (R. 34).

The material allegations referred to above were admitted to be true and appear in the Stipulation in paragraphs 17, 19, 20, 22, 25, 26, 27, 30, 31, 32, 33 and 34 (R. 34).

These allegations will be set out later in this Brief, for the purpose of comparison with the complaint in the case in the Circuit Court of Milwaukee County.

Specification of Errors To Be Urged

The District Court erred:

(1) In holding that a judgment of a state court based on a general demurrer was *res judicata* as to a new action, between the same parties, on a wholly different complaint, precluded a United States District Court from inquiring into the merits.

(2) In holding that the construction of a state statute by the court of last resort precluded the district court from inquiring into the effect of that construction upon the laws of the United States.

(3) In holding that a judgment of a state court, declaring rights and status, based on a complaint that did not state a cause of action, was binding on the United States District Court.

Argument

I.

Can a judgment declaring rights and status be entered on a complaint which does not state a cause of action?

We are met at the outset by this query.

While this is not the principal contention of the appellants we believe it should be determined before considering the other contentions of the parties.

If, as we believe, the entry of a judgment declaring rights and status on a complaint that does not state a cause of action is erroneous, *ab initio,* it cannot be *res judicata* precluding a United States Court from inquiry.

If the complaint does not state a cause of action, there can be no actual or *bona fide* justiciable controversy such as is necessary to sustain a judgment for Declaratory relief.

When the Circuit Court of Milwaukee County, in the case of *United Gas, Coke & C. Workers, et al, v. W. E. R. B.,* 255 Wis. 154, sustained a general demurrer to the complaint it said, in effect, that there was no controversy.

The Wisconsin Supreme Court has held, in *Miller v. Currie,* 208 Wis. 199, 204:

* * * * *

'(2) There must be an actual and *bona fide* controversy as to which the judgment will be *res judicata.* Such a case requires that all the interested parties shall be before the court.' "

and in *Heller v. Shapiro*, 208 Wis. 310, 316:

> "But it should be called to the attention of the profession that the courts will not, under the statute, act in a mere advisory capacity or take cognizance of questions that may never arise or permit resort to the statute until an actual controversy has arisen under an existing state of facts, and we consider that this may most forcibly be done by ignoring the questions the trial court attempted to settle by its declaratory judgment."

At the same time that the *United Gas Workers* case, *supra*, was heard, and determined, a companion case, *Amalgamated Ass'n of Street, Electric, Railway & Coach Employees of America, Division 998, et al, v. Milwaukee Electric Railway & Transport Co.*, 255 Wis. 163, was heard and determined.

In that case, the separate defendants answered. The plaintiffs demurred to the answers. The Circuit Court of Milwaukee County overruled the demurrers, and entered judgment declaring rights and status.

The judgments entered in each case were exactly the same, but the Supreme Court of Wisconsin reversed the Circuit Court of Milwaukee County in the *Amalgamated Ass'n case*, stating:

> "This case was argued and submitted with the case of *United G., C. & C. Workers v. Wisconsin E. R. Board*, ante, p. 154, 38 N. W. (2d) 692, before the trial court and before this court.
>
> Following the argument and submission of this case below, the trial court filed a decision overruling the demurrers to the separate answers of the defendants, but directed that judgments might be entered declaring the rights and status of the parties. When the demurrers were overruled, the burden of proceeding with the case was upon the plaintiffs. The plaintiffs

elected to produce no evidence and upon that election the trial court should have entered an order dismissing the complaint. For that reason the judgment entered must be reversed.

By the Court—Judgment reversed and cause remanded with directions to enter an order dismissing the plaintiffs' complaint."

We respectfully submit that if the judgment in one case was erroneous, then the judgment in the companion case was erroneous.

The decision in the *Amalgamated Ass'n* case merely followed the long settled law of Wisconsin.

As the District Court based its decision of *res judicata* on what we believe to be an erroneous judgment, under Wisconsin law, we will, in the hope of aiding the court, cite and quote from a few Wisconsin Supreme Court decisions, which set out the Wisconsin rule.

Gentilli v. Brennan, 202 Wis. 465, 470 (1930):

"Furthermore, such inquiries as these papers are directed to, have no place in this case, upon the state of the record. Defendants demurred to the plaintiff's complaint, and the sole question before the court is whether the complaint upon its face stated a cause of action in favor of the plaintiff."

Trathen v. Lyon, 224 Wis. 446, 449 (1937):

"As was pointed out in *Gentilli v. Brennan,* 202 Wis. 465, 233 N. W. 98, the sole question upon demurrer is whether the facts alleged in the pleading to which the demurrer is directed are sufficient to constitute a cause of action or defense. This statement is reiterated for the reason that the briefs set forth matters of fact not contained in the pleadings, and because the trial court made and entered findings of fact and conclusions of law in disposing of the demurrer. All of these procedures are irrelevant and irregular."

Chas. H. Stehling Co. v. Milcor Steel Co. 242 Wis. 629, 631 (1943):

> "'After a demurrer has been sustained, the effect is to hold for naught the declaration or complaint.' 41 Am. Jur. p. 468, sec. 249, Pleading. The fact that the order recites that the demurrer is overruled on the other grounds specified therein does not determine the law of the case after the service of an amended complaint. It may be an advance notice to the defendant of what the decision of the court will be in the event a demurrer is interposed to the amended complaint upon the grounds alleged, but in no way will it make the questions *res judicata.* An order sustaining a demurrer to a complaint is of no effect as determining the law of the case after the service of an amended complaint."

United States F. & G. Co. v. Pullen, 230 Wis. 137, 141 (1939):

> "The trial court concluded, in passing upon the demurrer to the amended complaint, that because no appeal was taken from the order sustaining a demurrer to the original complaint, the court's ruling in sustaining the latter demurrer constituted the law of the case excepting in so far as the amendment supplied allegations which were lacking in the original complaint, and which are necessary to set forth a cause of action. That conclusion was erroneous. The practice is well settled that 'an order of the trial court sustaining a demurrer to a pleading is not *res adjudicata* upon the same questions raised upon a second demurrer.' *Rogers v. John Week Lumber Co.,* 117 Wis. 5, 8, 93 N. W. 821; *Schoenleber v. Burkhardt,* 94 Wis. 575, 69 N. W. 343; *Watson v. Appleton,* 62 Wis. 267, 22 N. W. 475; *Hackett v. Carter,* 38 Wis. 394."

We respectfully submit that the judgment of the Circuit Court of Milwaukee County was erroneous *ab initio* and could not be *res judicata* to the new action in the District Court.

II.

The amended complaint raises issues not adjudicated by Wisconsin courts.

The District Court's Conclusions of Law 4 and 5 read (R. 82):

> "4. The causes of action in both actions being the same and the parties being identical or in privity, the judgment of the circuit court of Milwaukee county was affirmed by the Supreme Court of Wisconsin is *res adjudicata* and conclusive of the parties not only as to all the issues pertaining to the constitutionality of the statute as applied to the plaintiffs that might have been raised.
>
> 5. The declaratory judgment of the circuit court of Milwaukee county, as affirmed by the Supreme Court of Wisconsin introduced into the record in this case, is *res adjudicata* as to all the issues sought to be raised in this action and consequently bars the maintenance of this action."

In the amended complaint (R. 1) and the Stipulation (R. 34) there are ten allegations of fact that could not possibly be raised in the Circuit Court action. These ten allegations refer to overt acts occurring nine months after the Circuit Court action was decided.

Summarized from the Stipulation these ten overt acts are as follows:

Par. 19. The union terminated its contract with the company on June 1, 1949 by written notice as required by the Labor-Management Relations Act of 1947. (R. 38)

Par. 20. The Federal Mediation and Conciliation Service intervened and assisted in the negotiations of a contract for 1949-1950. (R. 38)

Par. 22. September 19, 1949, the union filed a charge of unfair labor practice by the Gas Co. for refusal to bargain collectively. (R. 38)

Par. 25. On September 28, 1949, the defendant company petitioned the defendant, Wisconsin Employment Relations Board, to appoint a conciliator. (R. 39)

Par. 26. On October 3, 1949, the defendant, Wisconsin Employment Relations Board, issued an order directing the plaintiffs to strike the name of one person from a list of proposed arbitrators. (R. 39)

Par. 30. On October 5, 1949, the employees of the defendant company went out on strike. (R. 42)

Par. 31. On October 6, 1949, the defendant Wisconsin Employment Relations Board secured an order from the Circuit Court of Milwaukee County restraining appellants from going out on strike, from engaging in picketing and directed that immediate steps be taken to notify all employees to return to work immediately. (R. 42)

Par. 32. That the Attorney General would, if any violation occurred, enforce subchapter III of Chapter 111. (R. 43)

Par. 33. On October 6, 1949, the union and the company agreed on wages, hours, and other conditions of employment, but did not agree on a pension plan which was one of the principal issues of the strike. That if an impasse or stalemate arose as to this issue the company would request compulsory arbitration. (R. 43)

Par. 34. That if such impasse or stalemate occurred, the defendant Wisconsin Employment Relations Board would enforce subchapter III of Chapter 111. (R. 43)

As to these ten issues the Circuit Court judgment could not possibly be *res judicata*.

The Circuit Court itself realized that its judgment was restricted to the particular facts before it, stating in its opinion (R. 55):

> "In the briefs of counsel for plaintiff and upon the oral argument, certain hypothetical situations were propounded, in which it was claimed that Chapter 414, especially Sec. 111.62, would operate oppressively. The claimed inequalities will be adjudicated when actual cases arise which require a decision upon the points raised. *Wisconsin Telephone Co. v. Wisconsin E. R. B.* —Wis.—(decided Nov. 16, 1948); *Democrat Printing Co. v. Zimmerman*, 245 Wis. 406. The invalidity of Sec. 111.62, or any part thereof, would not invalidate the Act as a whole."

The Supreme Court of Wisconsin also recognized this restriction. In its opinion affirming the Circuit Court, *United G. C. & C. Workers v. WERB*, 255 Wis. 154, the Supreme Court says at page 158:

> "We are first confronted with a fundamental rule of law that the constitutionality of a statute is not to be determined as a hypothetical question or upon assumed facts or unreal possibilities. The court should not anticipate a question of constitutional law before it is to be applied to the precise facts before it and should not attempt to test the operation of a law under every conceivable set of circumstances."

and on page 161:

> "Upon the record here there is no question of the delegation of judicial power. This question and other contentions and arguments of the plaintiffs can be disposed of best when a case involving a particular question is presented and fully argued. If any person

> or agency, in the enforcement of the law, should attempt to usurp unlawful legislative or judicial powers there is an adequate remedy."

The contingencies referred to in both opinions have happened, and are present in the case at bar.

While the last sentence in the quotation from the Circuit Court opinion "The invalidity of Sec. 111.62, or any part thereof, would not invalidate the Act as a whole" is perhaps *dicta*, it indicates that the Court had some doubt as to its validity.

III.

Conflict With Federal Law

The District Court held that the judgment of the Circuit Court of Milwaukee County affirmed by the Wisconsin Supreme Court *(United G. C. & C. Workers v. WERB*, 255 Wis. 154) precluded it from deciding the issues in the instant case.

The Circuit Court of Milwaukee County held that subchapter III, Chapter 111, Wisconsin Statutes, was not in conflict with the Federal Labor-Management Relations Act.

That finding was made on the allegations in the complaint in the Circuit Court case. In its opinion (R. 48) the court gives its reasons for so holding (R. 57):

> "The allegations of the amended complaint in the Gas Company case merely allege that the defendant company is engaged in Interstate Commerce and is therefore subject to the National Act.
>
> * * * * *
>
> "The Wisconsin Supreme Court has uniformly held that until and unless the National Labor Relations

> Board takes jurisdiction over a particular controversy, Congress intended to leave within the reserved power of the state the right to deal with such controversies."

There being no allegation in the complaint that the National Labor Relations Board had taken jurisdiction of the labor relations between the employees and the defendant Gas Company, the Circuit Court could not and did not consider that issue.

The court concedes in its opinion (quote supra) that if the National Labor Relations Board had taken jurisdiction the State Board could not.

In the amended complaint in the instant case there are five allegations of fact, which appellants contend prove that the National Labor Relations Board had taken jurisdiction over all the labor relations of the Gas Company and its employees, and intervened in the particular dispute which resulted in the strike.

These facts appear in the Stipulation as follows:

> "28 (c) That on June 24, 1943, an order was entered by the National Labor Relations Board directing an election for the purpose of determining the representative of the employees of the company for collective bargaining (National Labor Relations Board Case No. R-5398). This order was (fol. 66) amended by order of the National Labor Relations Board, dated July 8, 1943, for the purpose of further defining the unit. A supplemental decision and certification of the National Labor Relations Board in this case was entered on October 5, 1943, certifying United Gas, Coke and Chemical Workers of America (CIO) as the representative of the employees of the company in the unit (R. 41).
>
> An order dated October 30, 1946, was entered by the National Labor Relations Board directing an election

with respect to employees of the company in a unit comprised of supervisory employees (National Labor Relations Board Case No. 13-R-3037). At the election conducted pursuant to this order less than a majority of the employees of the unit voted to be represented by a union (R. 41)."

"19. That the most recent of such contracts was entered into between the plaintiff union and the defendant company on September 24, 1948, which by its terms remained in full force and effect until June 1, 1949, and from year to year thereafter unless terminated by written notice on or before April 1st, of any year; that the plaintiff union terminated said agreement as of June 1, 1949, by written notice (fol. 63) to the defendant company prior to April 1, 1949, as required by Section 8 (d) of the Labor-Management Relations Act of 1947 (R. 38).

"20. That the Federal Mediation and Conciliation Service, acting under the Notice of Termination of Contract, copy of which was submitted to it, intervened and proceeded to assist in the negotiation of a contract for the year 1949-50 (R. 38).

"22. That on September 19, 1939, the plaintiff union filed a petition with the National Labor Relations Board, charging the defendant company with having violated Section 8 (a) (5) of the Labor-Management Relations Act of 1947, in that it was guilty of an unfair labor practice for having failed and refused to bargain collectively with the plaintiff union, the duly authorized bargaining representative of the majority of the employees in the bargaining unit, and that such petition is now pending before the National Labor Relations Board (R. 38)."

We respectfully submit that these facts raise the contention that the National Labor Relations Board had already taken jurisdiction. If this contention were resolved in appellants' favor, it would, in the Circuit Court's own language (quote supra), prevent the State Board from acting.

That contention had never been before any Wisconsin court. It was made in the District Court action as an entirely new issue for adjudication.

If the contention that the National Labor Relations Board had assumed jurisdiction was decided by the District Court in favor of appellants, a judgment granting all the relief prayed for could be and, as we believe, should be entered.

Conclusion

We respectfully submit (a) that the judgment of the Circuit Court of Milwaukee County upon which the District Court relied was erroneous *ab initio;* (b) that the opinions of the Wisconsin Circuit and Supreme Courts conclusively restrict the judgment to the facts in the record before them; (c) that the complaint in the District Court raises issues that were not adjudicated by the Wisconsin Courts; (d) that the District Court should have adjudicated the contention that the Wisconsin Statute violates the Thirteenth and Fourteenth Amendments of the United States Constitution, and is in conflict with the laws of the United States.

The judgment of the District Court for the Eastern District of Wisconsin should be reversed.

Respectfully submitted,

MAX RASKIN,

Attorney for Appellants.

APPENDIX "A"

Subchapter III, Chapter 111
Wisconsin Statutes

Public Utilities

111.50 Declaration of policy * * * * *

111.51 Definitions * * * * *

111.52 Settlement of labor disputes through collective bargaining and arbitration. It shall be the duty of public utility employers and their employes in public utility operations to exert every reasonable effort to settle labor disputes by the making of agreements through collective bargaining between the parties, and by maintaining the agreements when made, and to prevent, if possible, the collective bargaining process from reaching a state of impasse and stalemate. (1947 c. 414)

111.53 Appointment of conciliators and arbitrators. Within 30 days after July 25, 1947, the board shall appoint a panel of persons to serve as conciliators or arbitrators under the provisions of this subchapter. No person shall serve as a conciliator and arbitrator in the same dispute. Each person appointed to said panels shall be a resident of this state, possessing, in the judgment of the board, the requisite experience and judgment to qualify such person capably and fairly to deal with labor dispute problems. . . .

111.54 Conciliation. If, in any case of a labor dispute between a public utility employer and its employes, the collective bargaining process reaches an impasse and stalemate, with the result that the employer and the employes are unable to effect a settlement thereof, then either party to the dispute may petition the board to appoint a conciliator from the panel, provided for by section 111.53. Upon the filing of such petition, the board shall consider the same, and if, in its opinion, the collective bargaining process, notwithstanding good faith efforts on the part of both sides to such dispute, has reached an impasse and stalemate and such dispute, if not settled, will cause or is likely to cause the interruption of an essential service, the board shall ap-

point a conciliator from the panel to attempt to effect the settlement of such dispute. The conciliator so named shall expeditiously meet with the disputing parties and shall exert every reasonable effort to effect a prompt settlement of the dispute. (1947 c. 414)

111.55 Conciliator unable to effect settlement; appointment of arbitrators. If the conciliator so named is unable to effect a settlement of such dispute within a 15-day period after his appointment, he shall report such fact to the board; and the board, if it believes that a continuation of the dispute will cause or is likely to cause the interruption of an essential service, shall submit to the parties the names of either 3 or 5 persons from the panel provided for in section 111.53. Each party shall alternately strike one name from such list of persons. The person or persons left on the list shall be appointed by the board as the arbitrator (or arbitrators) to hear and determine such dispute. (1947 c. 414)

111.56 Status quo to be maintained. During the pendency of proceedings under this subchapter existing wages, hours, and conditions of employment shall not be changed by action of either party without the consent of the other. (1947 c. 414)

111.57 Arbitrator to hold hearings * * * *

111.58 Standards for arbitration * * * *

111.59 Award filed with Clerk of circuit court * * * *

111.60 Judicial review of order * * * *

111.61 Board to establish rules * * * *

111.62 Strikes, work stoppages, slowdowns, lockouts, unlawful; penalty. It shall be unlawful for any group of employes of a public utility employer acting in concert to call a strike or to go out on strike, or to cause any work stoppage or slowdown, which would cause an interruption of an essential service; it also shall be unlawful for any public utility employer to lock out his employes when such action would cause an interruption of essential service; and it shall be unlawful for any person or persons to instigate, to induce, to conspire with, or to encourage any other

person or persons to engage in any strike or lockout or slowdown or work stoppage which would cause an interruption of an essential service. Any violation of this section by any member of a group of employes acting in concert or by any employer or by any officer of an employer acting for such employer, or by any other individual, shall constitute a misdemeanor. (1947 c. 414)

111.63 Enforcement. The Board shall have the responsibility for enforcement of compliance with the provisions of this subchapter and to that end may file an action in the circuit court of the county in which any such violation occurs to restrain and enjoin such violation and to compel the performance of the duties imposed by this subchapter. In any such action the provisions of sections 103.51 to 103.63 shall not apply. (1947 c. 414)

111.64 Construction. (a) Nothing in this subchapter shall be construed to require any individual employe to render labor or service without his consent, or to make illegal the quitting of his labor or service or the withdrawal from his place of employment unless done in concert or agreement with others. No court shall have power to issue any process to compel an individual employe to render labor or service or to remain at his place of employment without his consent. It is the intent of this subchapter only to forbid employes of a public utility employer to engage in a strike or to engage in a work slowdown or stoppage in concert, and to forbid a public utility employer to lock out his employes, where such acts would cause an interruption of essential service.

(b) All laws and parts of laws in conflict herewith are, to the extent of such conflict concerning the subject matter, dealt with in this subchapter, supplanted by the provisions of this subchapter. (1947 c. 414)

LABOR-MANAGEMENT RELATIONS ACT

1947

(61 Stats. 136, 29 U.S.C.A. Supp.
Sec. 141 *etc. seq)*

(Pertinent Parts)

TITLE I.

Section 1. The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes aris-

ing out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

• • • •

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

• • • •

Sec. 8 (a) It shall be an unfair labor practice for an employer . . .

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provision of section 9 (a).

• • • •

Sec. 8 (b) It shall be an unfair labor practice for a labor organization or its agents . . .

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees, subject to the provisions of section 9 (a);

• • • •

Sec. 13. Nothing in this Act, except as specifically provided for herein, shall be construed so as to either interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

Sec. 14 (b) Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a

condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial Law.

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TITLE II.

Sec. 201. That it is the policy of the United States that . . .

(a) sound and stable industrial peace and the advancement of the general welfare, health, and safety of the Nation and of the best interests of employers and employees can most satisfactorily be secured by the settlement of issues between employers and employees through the processes of conference and collective bargaining between employers and the representatives of their employees;

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